

ESTTA Tracking number: **ESTTA264750**

Filing date: **02/05/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Max-Wellness, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	5900 Landerbrook Drive Suite 203 Cleveland, OH 44124 UNITED STATES		

Attorney information	Raymond Rundelli Calfee, Halter & Griswold LLP 800 Superior Avenue Suite 1400 Cleveland, OH 44114 UNITED STATES ipdocket@calfee.com, rrundelli@calfee.com Phone:216.622.8854
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Registration Subject to Cancellation

Registration No	2664034	Registration date	12/17/2002
Registrant	Max Well Medical, LLC 240 Cumberland Bend Nashville, TN 372281804 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2000/07/31 First Use In Commerce: 2000/07/31 All goods and services in the class are cancelled, namely: Mail order services featuring diabetic supplies
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Related Proceedings	Petitioner is also petitioning to cancel U.S. Reg. No. 2,848,250, which is owned by a party related to Registrant

Attachments	00481534.PDF (3 pages)(24415 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Raymond Rundelli/
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Name	Raymond Rundelli
Date	02/05/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No.: 2,664,034

For the Mark: MAX WELL MEDICAL

Date of Issue: December 17, 2002

<i>MAX-WELLNESS, LLC,</i>)	
)	
Petitioner,)	Cancellation No.:
)	
v.)	
)	
<i>MAX WELL MEDICAL, INC.,</i>)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner Max-Wellness, LLC is a Delaware limited liability company with its principal place of business at 5900 Landerbrook Drive, Suite 203, Cleveland, Ohio 44124. Petitioner believes that it is being, has been and will be damaged by the continued existence of the above-referenced registration on the Principal Register, and hereby petitions for the cancellation of that registration.

The grounds for cancellation are alleged as follows:

1. Registrant, Max-Well Medical, Inc., is the owner of record of U.S. Trademark Registration No. 2,664,034 (the “‘034 Registration”) for the mark MAX WELL MEDICAL in International Class 035 for “mail order services featuring diabetic supplies.”

2. Petitioner is the owner of record of the currently pending U.S. Trademark Application No. 77/616,845 (the “‘845 Application”), which has been made on an intent-to-use basis and requests registration of the mark MAX-WELLNESS in International Class 035 for “retail store services, mail order catalog services, computerized on-line ordering services, and direct response retail services by means of print advertisements, featuring health foods, dietary supplements, herbs, nutritional supplements, sports nutrition products, vitamins, health and beauty care products, fitness products, cosmetics, body care products, exercise products, personal healthcare items, aromatherapy products and homeopathic products.”

3. The '034 Registration was registered on December 17, 2002. Registrant failed to make the filing required by Section 8 that was due by December 17, 2008. If maintenance action is not taken by the end of the grace period on June 17, 2009, the '034 Registration will lapse.

4. A general investigation authorized by Petitioner, including a search of the internet, reveals no current use in commerce by or on behalf of Registrant of the MAX WELL MEDICAL mark on or in connection with the mail order services identified in the '034 Registration. This investigation uncovered that the once active www.maxwellmedical.com website, owned by Registrant became inactive at least as early as November of 2007. It appears Registrant's company has changed their name from Max Well Medical, Inc. to Specialty Care Pharmacy, LLC and adopted a new website (<http://www.specialtycarerx.com/about.html>) and new marks.

5. On information and belief, the mark MAX WELL MEDICAL is no longer in use in commerce by or on behalf of Registrant on or in connection with the services described in the '034 Registration.

6. On information and belief, use in commerce of the mark MAX WELL MEDICAL by or on behalf of Registrant has been discontinued on or in connection with the services identified in the '034 Registration with an intent not to resume use.

7. On information and belief, the mark MAX WELL MEDICAL has been abandoned by Registrant and the '034 Registration is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

8. The continued existence of the '034 Registration despite Registrant's abandonment of the mark MAX WELL MEDICAL casts a cloud on Petitioner's own right to use and develop trade designations incorporating the terms MAX WELL as a name or mark for retail store, mail order, and on-line ordering services in the United States, and, as such is and would continue to be a source of damage and injury to Petitioner.

9. The continued existence of the '034 Registration despite Registrant's abandonment of the mark MAX WELL MEDICAL may prevent Petitioner from obtaining a registration for the mark MAX-WELLNESS on the basis of the '845 Application, and, as such is likely to be a source of injury to Petitioner.

WHEREFORE, Petitioner believes that it is being, has been and will be damaged by the '034 Registration and prays that each be cancelled and that this Petition for Cancellation be granted.

This Petition for Cancellation is being submitted with the required filing fee.

Respectfully submitted,

/Raymond Rundelli/
Raymond Rundelli
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Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served on counsel of record for Registrant as indicated in the records of the U.S. Patent and Trademark Office by mailing a true copy thereof to its attorney of record, by first class mail, postage prepaid, this 5th day of February, 2009, in an envelope addressed as follows:

E. Andrew Norwood
Waller Lansden Dortch & Davis
511 Union Street, Suite 2100
Nashville, Tennessee 37219

/Raymond Rundelli/
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